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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|-----------------------------|------------------|
| 09/736,937 | 12/14/2000 | Duane D. Blatter | 13861.21.2 | 1535 |
| 32642 | 7590 | 05/17/2004 | | |
| STOEL RIVES LLP 201 SOUTH MAIN STREET ONE UTAH CENTER SALT LAKE CITY, UT 84111 | | | EXAMINER ROBERTS, PAUL A | |
| | | | ART UNIT 3731 | PAPER NUMBER |

DATE MAILED: 05/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-----------------|----------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 09/736,937 | BLATTER ET AL. | |
| | Examiner | Art Unit | |
| | Paul A Roberts | 3731 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above claim(s) 8,17,28,37 and 914 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18-27,29-36,38,39 and 43-56 is/are allowed.
- 6) ☒ Claim(s) 1,2,6,12,13,16,40-42 and 57 is/are rejected.
- 7) ☒ Claim(s) 3-5,7,10,11 and 15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 8, 9, 14, 17, 28, and 37 are withdrawn from further consideration.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 6, 12, 13, 16, 40-42, and 57 are rejected under 35 U.S.C. 102(b) as being anticipated by Tzakis 5,188,638.
3. Regarding claims 1 and 16, Tzakis discloses a compression plate anastomosis apparatus for anastomosing a first vessel and a second vessel together, comprising: a first compression plate (figure 1) having a first compression plate opening (the bore in the device of figure 1), wherein the first compression plate opening has a perimeter defined by first holding means (12) for holding a portion of the first vessel that defines a first vessel opening, wherein the first compression plate is shaped to enable the first vessel portion to extend through the first compression plate opening in a manner such that the first vessel opening conforms to the perimeter of the first compression plate opening (see figure 2), and wherein the first holding means is adapted to hold the first vessel portion in a manner such that the first vessel portion is at least partially everted, a second compression plate having a second compression plate opening (figure 3), wherein the second compression plate opening is defined by second holding means

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(38) for holding a portion of a second vessel (shown in figure 4) that defines a second vessel opening, the plates have a means to lock themselves together, and wherein the first holding means is shaped to hold the first vessel portion in a configuration such that when the first vessel portion and the second vessel portion are anastomosed together there is an uneven distribution of force against the first vessel portion caused by the shape of the first holding means. Figure 4 shows the shape of holding means causes an uneven distribution of force down the length of the vessel wall. In the applicant's device the uneven distribution of force is along the cross-section of the vessel, but this difference is not claimed.

4. Regarding claim 2, the compression plates are snap-fit plates that have a locking means snap into place when the plates are brought together.

5. Regarding claim 6, the second holding means is a holding surface located around the second compression plate opening with a configuration such that the portion of the second vessel defining the second vessel opening may be everted onto the holding surface.

6. Regarding claim 12, the first holding means are in mating configuration with respect to said second holding means once the second vessel is brought into contact with the first vessel for anastomosis.

7. Regarding claim 13, the second holding means is adapted to hold the portion of the second vessel that defines the second vessel opening in a manner such that the portion defining the second vessel is at least partially everted.

8. Regarding claims 40-42, and 57, figure 1 is the first plate, and element 12 is the holding means. While the device's staples do penetrate the vessel wall, the vessel is anastomosed when

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it is held in place by both plates before the vessel is stapled. Figure 3 is the second plate. The two plates can be locked together without puncturing the vessel.

Allowable Subject Matter

9. Claims 18-27, 29-36, 38, 39, and 43-56 are allowed. Claims 3-5, 7, 10, 11, 15 and are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

10. Regarding claims 3, 4, and 15, the prior art does not contain a first plate that has a locking arm extending from a ring, and a locking extension extending from the second plate.

11. Regarding claim 5, there are no holding tabs extending from an inner periphery of a ring on the plate.

12. Regarding claims 7, 26, and 35, the prior art compression plates do not extend radially downwardly at an angle from the second opening.

13. Regarding claim 10, the first holding means comprises a plurality of holding tabs 22 (each half circle is a holding tab). Element 37 cannot be considered a holding tab since tabs are different than staples.

14. Regarding claim 11, the first compression plate has a smooth inner periphery.

15. Regarding claims 18-27, figure 3 is the first plate, figure 1, is the second plate. The ring is element 38, the tabs are elements 37, and the ring and tabs define a first opening and allow a vessel to pass through the opening. The two plates have locking components that are snap fit. The first vessel portion is not partially everted around the first holding tab.

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16. Regarding claim 29, the ring of first plate does not have tabs extending therefrom.
17. Regarding claims 38, 39, and 43-56, the first plate is figure 3, and the plate contains ring 38 but does not contain holding tabs extending therefrom.

Response to Arguments

Applicant's arguments with respect to claims 1-7, 10-13, 15-16, 18-27, and 29-36 have been considered but are moot in view of the new ground(s) of rejection. The applicant's amendments are sufficient to overcome the Lim '615.

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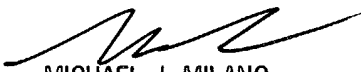
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul A Roberts whose telephone number is (703) 305-7558. The examiner can normally be reached on 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J Milano can be reached on 703-308-2496. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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04/30/04


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